

**BEE TREE MINING, INC. and United Mine
Workers of America, AFL-CIO. Case 9-CA-
29831**

January 11, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by the Union on August 5, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Bee Tree Mining, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On December 11, 1992, the General Counsel filed a Motion for Summary Judgment. On December 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose by letter dated November 24, 1992, counsel for the General Counsel notified the Respondent and its trustee in bankruptcy¹ that unless an answer was received by the close of business December 3, 1992, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ The Respondent is apparently involved in Chapter 7 bankruptcy proceedings. By letter dated November 20, 1992, the Respondent's attorney, in response to a letter from the General Counsel advising him of the Respondent's need to file an answer to the complaint, advised, inter alia, that he represented the Respondent in the bankruptcy proceedings, not the Board proceedings, and that the General Counsel should direct himself to the Respondent's trustee in bankruptcy, Arthur Standish, regarding this matter.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, at all material times, has been engaged in the operation of a coal mine near Cow Creek, West Virginia. During the 12 months preceding the issuance of the complaint, a representative period, the Respondent, in the conduct of its operations, sold and shipped from its Cow Creek, West Virginia facility goods valued in excess of \$50,000 to Wheeling-Pittsburg Coal Company, located in Omar, West Virginia, which in turn sells and ships annually from its Omar, West Virginia facility goods valued in excess of \$50,000 directly to points located outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since about September 1, 1991, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit and has, since then, been recognized as such by the Respondent. The Respondent's recognition of the Union has been embodied in a collective-bargaining agreement (the National Bituminous Coal Wage Agreement of 1988) which is effective from September 1, 1991, through February 1993. Pursuant to Section 9(a) of the Act, the Union, since September 1, 1991, has been and is the exclusive collective-bargaining representative of the Respondent's unit employees. The appropriate bargaining unit consists of:

All employees of Bee Tree Mining, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, cleaning of coal and transportation of coal (except) by waterway or rail not owned by Bee Tree Mining, Inc., repair and maintenance work normally performed at the mine site or at a central shop[s] of Bee Tree Mining, Inc. and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [Respondent], excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees, and all professional employees, guards, and supervisors as defined in the Act.

Since about February 6, 1992, the Respondent, without the Union's consent, has failed to continue in full force and effect all the terms and conditions of its

agreement with the Union, which are mandatory subjects of bargaining, by failing to provide health insurance benefits to unit employees pursuant to article XX of that agreement. We find that by engaging in such conduct, the Respondent has failed and refused and is failing and refusing to bargain collectively with the Union within the meaning of Section 8(d) of the Act, and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By failing to continue in full force and effect all the terms and conditions of its agreement with the Union by not providing unit employees with health insurance as required by article XX of that agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to continue in full force and effect all the terms and conditions of its collective-bargaining agreement with the Union, and to provide employees with health insurance benefits required by article XX of its agreement that have not been provided since about February 6, 1992. We shall also order the Respondent to make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to continue in effect all the terms and conditions of its collective-bargaining agreement, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest on such amounts to be computed in the manner described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Bee Tree Mining, Inc., Cow Creek, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to continue in full force and effect all the terms and conditions of its collective-bargaining agreement with United Mine Workers of America, AFL-CIO, which is the designated exclusive bargaining representative of the Respondent's employees in an appropriate unit, by failing to provide unit employees with health insurance benefits pursuant to article XX of that agreement. The appropriate bargaining unit consists of:

All employees of Bee Tree Mining, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, cleaning of coal and transportation of coal (except) by waterway or rail not owned by Bee Tree Mining, Inc., repair and maintenance work normally performed at the mine site or at a central shop[s] of [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Bee Tree Mining, Inc., excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees, and all professional employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect all the terms and conditions set forth in the parties' collective-bargaining agreement and provide unit employees with the health insurance benefits required by article XX of that agreement that have not been provided since about February 6, 1992.

(b) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to continue in full force and effect all the terms and conditions of its agreement with the Union, with interest as described in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Cow Creek, West Virginia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to continue in full force and effect all the terms and conditions of our collective-bargaining agreement with United Mine Workers of America, AFL-CIO, which is the designated exclusive bargaining representative of our employees in an appropriate unit, by failing to provide unit employees with health insurance benefits pursuant to article XX of that agreement. The appropriate bargaining unit consists of:

All employees of Bee Tree Mining, Inc. engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, cleaning of coal and transportation of coal (except) by waterway or rail not owned by Bee Tree Mining, Inc., repair and maintenance work normally performed at the mine site or at a central

shop[s] of Bee Tree Mining, Inc. and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [Respondent], excluding all coal inspectors, weight bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees, and all professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect all the terms and conditions of our agreement with the Union, and shall provide unit employees with health insurance benefits pursuant to article XX of our agreement that have not been provided since about February 6, 1992.

WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure and refusal to continue in full force and effect all the terms and conditions of our agreement with the Union, with interest.

BEE TREE MINING, INC.